83-659

No.

Office-Supreme Court, U.S.
FILED
OCT 19 1983
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1983

FREDERICK PAUL AND AILEEN M. PAUL,
PETITIONERS,

V.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD P. SWISHER
GARVEY, SCHUBERT, ADAMS & BARER
30th Floor, Bank of California
Center
Seattle, WA 98164
Telephone: (206) 464-3939

Counsel of Record
for Petitioners
Frederick Paul and
Aileen M. Paul

QUESTION PRESENTED

Did the Ninth Circuit, in refusing to honor the express language of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1620(a), which granted exemption from taxation of moneys paid to native Americans "in any manner" under the Act, contravene established rules of statutory construction and violate this Court's rule that such statutes must be construed in favor of native Americans?

LIST OF PARTIES AFFECTED

The caption of the case in this Court contains the names of all parties affected.

TABLE OF CONTENTS

	Page
Question Presented	i
List of Parties Affected	ii
Jurisdictional Statement	2
Opinion Below	2
Statutory Provisions Involved	3
Introduction	6
Statement of the Case	9
Reasons for Granting the Writ	15
I. The Decision Below Violates Established Principles of Statutory Construction By Overlooking the Plain Language of the Statute and By Reading In An Interpretation Without Support in Legislative History	15
A. The Ninth Circuit's Opinion Improperly Gives Deference to the Erroneous Construction of	

§1620(a) by the Commissioner and the Tax Court.....15

B. Section 1620(a) On Its Face Exempts Revenues Received By Petitioners From Taxation.....20

C. The Ninth Circuit's Opinion Ignored Established Principles of Statutory Construction.....23

1. Since Section 1620(a) Is Unequivocal, the Court's Resort to Legislative History was Improper.....23

2. The Court's Decision Improperly Renders a Portion of the Act's Language Nugatory.....26

3. The Court's Decision Fails to Apply the Principle that Inclusion of an Express Exception to a Statutory Provision Excludes Additional Exceptions.....31

D. The Ninth Circuit's Decision Has No Support In Legislative History or Congressional Intent.....32

1. The History and Evolution of Section 1620(a) Do Not Support the Ninth Circuit's Interpretation.....32

a. The Section 1620(a) Exemption from Taxation Was Progressively Broadened at Each Stage of the Legislative Process.....32

b. Changes Made to the Exemption in the Final Senate Bill Demonstrate That the Ninth Circuit's Interpretation Is Incorrect....35

c. The Conference Report Contains No Support for the Ninth Circuit's Interpretation.43

d. Legislative History Contains No Basis for Overriding the Clear Language of Section 1620(a).....45

2. Congressional Intent As Expressed in the Alaska Native Claims Settlement Act Does Not Support the Ninth Circuit's Interpretation.....47

II. The Decision Below Violates This Court's Clear Mandate that Statutes Governing the Rights of Native Americans Must Be Construed in Their Favor.....50

III. Equitable Considerations Require that Petitioners be Relieved from the Devastating Consequences of the Ninth Circuit's Holding that the Moneys Received Under the Act Were Not Exempt from Taxation.....54

Conclusion 59

Appendix A Memorandum Opinion and Order of Ninth Circuit.....A-1

Appendix B — Opinion, Findings of Fact, Judgment, and Order Denying Reconsideration of United States Tax Court.....B-1

Appendix C — Stipulation of Facts C-1

Appendix D — Text of Relevant Statutes and Congressional Materials.....D-1

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

Cases	Page
Administrator, Federal Aviation Administration v. Robertson, 422 U.S. 255 (1975)	30
Alaska Public Easement Fund v. Andrus, 435 F. Supp. 664 (D. Alaska 1977)	19, 52
Andrus v. Glover Construction Co., 446 U.S. 608 (1980)	31
Bennett v. City of Mayfield, 323 S.W. 2d 573 (Ky. 1959)	40
Bryan v. Itasca County, 426 U.S. 373 (1976)	51
Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971)	46
Coachella Valley County Water District v. Dreyfuss, 91 Cal. App. 3d 949, 154 Cal. Rptr. 467 (1979)	39
Colautti v. Franklin, 439 U.S. 379 (1979)	29
Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980)	24,45
DeCouteau v. District County Court, 420 U.S. 425 (1975)	50,51

Dent v. St. Louis-San Francisco Ry, 406 F.2d 399 (5th Cir. 1969). 46

Doty v. L.T. Campbell Construction Co., 43 So.2d 278 (La.App. 1949)..... 40

Doyon, Ltd. v. Bristol Bay Native Corp., 569 F.2d 491 (9th Cir. 1978)..... 24

E.I. du Pont de Nemours & Co. v. Collins, 432 U.S. 46 (1977)... 16

Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976)..... 23

Hamilton v. Butz, 520 F.2d 709 (9th Cir. 1975)..... 18

In Re Chetwood, 165 U.S. 443 (1897)..... 58

Mattz v. Arnett, 412 U.S. 481 (1973)..... 52

McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1972)..... 51

Paul v. Andrus, 639 F.2d 507 (9th Cir. 1980)..... 25

Paul v. Commissioner Internal Revenue, No. 82-7005, Tax #15502-79 (filed July 21, 1983)..... 2,14

Port of New York Authority v. Howell, 59 N.J. Super 343, 157 A.2d 731 (1960)..... 38

Quern v. Mandley, 436 U.S. 725 (1978)..... 16

Reiter v. Sonotone Corp., 442 U.S. 330 (1979)..... 30

Schlottman v. Wharton County, 259 S.W. 2d 325 (Tex. Civ. App. 1953)..... 38

Southeastern Community College v. Davis, 442 U.S. 397 (1979).... 16

Squire v. Capoeman, 351 U.S. 1 (1956)..... 53,54

State Highway Commissioner v. Spainhower, 504 S.W.2d 121 (Mo. 1973)..... 41

United States v. Klamath and Moadoc Tribes, 304 U.S. 119 (1937)..... 38

United States v. National Association of Securities Dealers, Inc., 442 U.S. 694 (1975)..... 16,19

United States v. Oregon, 366 U.S. 643 (1961)..... 22,23

United States v. Public Utility Commission, 345 U.S. 295 (1953).. 47

Worcester v. Georgia, 33 U.S. (6 Pet.) 515 (1832)..... 53

Zuber v. Allen, 396 U.S. 168 (1969)..... 19

Statutes

15 U.S.C. §78j(b)..... 23

26 U.S.C. §6013(e)..... 57

26 U.S.C. §1603(e)(2)(B)..... 57

26 U.S.C. §6213(a)..... 12

26 U.S.C. §7442..... 12

26 U.S.C. §7482..... 13

26 U.S.C. §7483..... 13

28 U.S.C. §1254(1)..... 2

43 U.S.C. §1601 et seq..... 3, 6, 7

43 U.S.C. §1601(a)..... 5,48

43 U.S.C. §1601(b)..... 48

43 U.S.C. §1602(a)..... 13

43 U.S.C. §1602(b)..... 3,9

43 U.S.C. §1604..... 9

43 U.S.C. §1605.....27,33, 41

43 U.S.C. §1605(a)..... 10

43 U.S.C. §1605(c).....28,42, 43

43 U.S.C. §1606.....27,33, 42,43

43 U.S.C. §1606(g)-(m)..... 28

43 U.S.C. §1609..... 25,26

43 U.S.C. §1619.....10,11,
27,28,29,35,42,50

43 U.S.C. §1619(a)..... 4,7

43 U.S.C. §1619(b)(1)..... 4

43 U.S.C. §1619(g)..... 5

43 U.S.C. §1620(a)..... 5,7,
12,13,14,20,21,22,24,26,27,28,29,
32,33,36,41,42,43,45,49

Court Rules

F.R.A.P. 13(a)..... 13

Tax Ct. R. 13(a).....

Legislative Materials

Alaska Native Land Claims: Hearings Before the Comm. on Interior and Insular Affairs, United States Senate on S.2906, S.1964, S.2690, and S.2020 and Related Bills, 90th Cong., 2d Sess. 321 (1968)..... 49

H. R. 10,397, 92nd Cong., 1st Sess. §6(m), 117 Cong. Rec. 37,064 (1971)..... 33,34

S.35, 92nd Cong., 1st Sess. §27(a), 117 Cong. Rec. 38,313 (1971)..... 34,35,
37,41

House Conf. Rep. No. 746, 92nd Cong., 1st Sess., Reprinted in 1971 U.S. Code Cong. & Ad. News 2,247, 2,259..... 4

Other Authorities

Black's Law Dictionary (5th ed. 1979)..... 37,39

3 Nichols' Law of Eminent Domain (Rev. 3d ed. 1981)..... 38

Oxford English Dictionary (1971 ed.)..... 39

C. Sands, Sutherland Statutory Construction (4th ed. 1974)..... 46

No.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

FREDERICK PAUL AND AILEEN M. PAUL,
PETITIONERS,

V.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Petitioners Frederick Paul and Aileen M. Paul ("Petitioners") respectfully pray that a writ of certiorari issue to review the judgment and Memorandum Opinion ("Opinion") of the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit").

JURISDICTION

The Ninth Circuit's Opinion was rendered and Order entered on July 21, 1983. This petition for certiorari was filed thereafter within 90 days. The Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

OPINION BELOW

The Ninth Circuit's Opinion is an unreported memorandum decision, Paul v. Commissioner of Internal Revenue, No. 82-7005, Tax #15502-79 (filed July 21,

1983). A copy of the Opinion appears in Appendix A attached to this Petition.

STATUTORY PROVISIONS INVOLVED

The principal provision of the Alaska Native Claims Settlement Act ("ANCSA" or "the Act"), Pub. L. 92-203, 85 Stat. 688, codified at 43 U.S.C. §1601-27 (1976) bearing upon the actions here at issue are as follows: [Additional excerpts from the ANSCA appear in Appendix D attached to this petition.]

DEFINITIONS

SEC. 3(b). For the purposes of this Chapter, the term--

. . . .

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or a combination thereof. . . .

[43 U.S.C. §1602(b)]

* * *

SEC. 20(a).

(a) Holding moneys in Fund for Authorized Payments

The Secretary of the Treasury shall hold in the Alaska Native Fund, from the appropriation made pursuant to §1605 of this title for the second fiscal year, moneys sufficient to make the payments authorized by this section.

[43 U.S.C. §1619(a)]

* * *

SEC. 20(b)(1). A claim for attorney and consultant fees and out-of-pocket expenses may be submitted to the Chief Commissioner of the United States Court of Claims for services rendered before December 18, 1971, to any Native tribe, band, group, village, or association in connection with:

(1) The preparation of this chapter and previously proposed Federal legislation to settle Native claims based on aboriginal title, ...

[43 U.S.C. §1619(b)(1)]

* * *

SEC. 20(g). (g) Claims for costs in performance of certain services: . . . payment of claims; . . . .

The Secretary of the Treasury shall pay to such claimant from the Alaska Native Fund the amount certified. . . .

[43 U.S.C. §1619(g)]

* * *

SEC. 21.(a) Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, village corporation, or an individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

[43 U.S.C. §1620(a)(emphasis added)]

* * *

SEC. 2(a) Congress finds and declares that--

(a) There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims; . . .

[43 U.S.C. §1601(a)]

INTRODUCTION

The Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §1601 et seq., is perhaps the most remarkable piece of Indian rights legislation to have been adopted in the history of this country. The ANCSA came about in part because Petitioner Fred Paul, an Alaskan native Indian, devoted over five years of his life and 7,000 hours of his professional time as a lawyer to its passage. Petitioner was later compensated for his work under the Act and subsequently claimed the protection of the Act exempting from taxation those revenues paid under the Act to qualified Alaskan natives.

This case is an appeal from the Ninth Circuit's affirmance of the Tax Court's decision that money received by Petitioner Fred Paul in 1975 from the Alaska Native Fund as compensation for legal services

was not exempt from taxation notwithstanding that: (a) Petitioner Mr. Paul is an "Alaska native" as that term is used in the Alaska Native Claims Settlement Act (43 U.S.C. §1601 et seq.); (b) that all such compensation was received directly from that fund pursuant to Section 20 of that Act (43 U.S.C. §1619); and (c) that Section 21(a) of that Act (43 U.S.C. §1620(a)) explicitly states that all revenues originating from the Alaska Native Fund "shall not be subject to any form of Federal, State or local taxation at the time of receipt by . . . an individual native through dividend distributions or in any other manner."

In so ruling, the Ninth Circuit Court has violated both its own and this Court's longstanding precedents requiring that treaties, statutes and contracts governing the relationship of governmental bodies to

native Americans be construed in favor of the natives. In addition, the Ninth Circuit failed to honor this Court's well-established principles of statutory construction by ignoring the plain language of the statute and by reading in extrinsic meaning not supported by any legislative history or precedent. As a result, Petitioners face a large tax delinquency on the money received by Mr. Paul for his efforts in obtaining passage of the Act for his fellow native Americans. If the Ninth Circuit's opinion is allowed to stand, not only will Petitioners be harmed, but also a serious incursion will be made in federal precedent requiring liberal construction of statutes in favor of native Americans. This Court should not permit the Ninth Circuit to construe the Act against a native American by ignoring the plain mandate of the statute

without legislative support for its interpretation.

STATEMENT OF THE CASE

Petitioner Fred Paul is a one-quarter Tlingit Indian and a member of the Tee-Hit-Ton Tribe of the Tlingit Nation. He is also a "native" as that term is defined by Section 3(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. §1602(b) and is duly enrolled pursuant to Section 5 of that Act (43 U.S.C. §1604). Appendix C at 2; Appendix B at 3. Mr. Paul is also an attorney at law, admitted to practice in the states of Washington and Alaska. He specializes in the practice of Indian law and holds himself out as an expert in that field. Appendix B at 3; Appendix C at 2-3.

In 1966, Fred Paul began to work as an attorney on behalf of the Inupiat natives of the North Slope of Alaska. Appendix B at 3-4. His contract was contingent in nature. He spent in excess of five years of his professional time engaged in intensive work on behalf of the people of the North Slope and Alaska Indians and Eskimos generally from 1966 to the end of 1971. Appendix B at 4; Appendix C at 2-3. His total involvement amounted to approximately 7,000 hours. This work came to fruition with the passage of the Alaska Native Claims Settlement Act on December 18, 1971.

The Alaska Native Claims Settlement Act created a fund known as the Alaska Native Fund which totaled $962,500,000. 43 U.S.C. §1605(a). Section 20 of that Act (43 U.S.C. §1619) provided a mechanism to compensate attorneys and consultants

from that fund for services rendered before December 18, 1971 to any native tribe, band, group, village or association in connection with settlement of the native land claims.

As a result of legal services performed by Mr. Paul on behalf of the Indian people, the Court of Claims, pursuant to procedures set out in Section 20 of the Alaska Native Claims Settlement Act (43 U.S.C. §1619) granted him compensation in the amount of $275,095. This amount was paid to him directly from the Alaska Native Fund pursuant to that section in or about May, 1975. Appendix B at 4; Appendix C at 3. He did not include this sum in his gross income reported for the tax year 1975 or any other year. Appendix B at 4-5; Appendix C at 3. Instead, he attached a schedule to his Form 1040 for 1975 and claimed exemption pursuant to 43

U.S.C. §1620(a) on the ground that the sums received were exempt "because he is an enrolled native within the meaning of that statute and the money came directly from that fund." Appendix B at 4-5.

The Internal Revenue Service disputed Paul's claim and determined in a notice of deficiency that the money received was includable in his gross income for 1975. Appendix B at 5. Petitioners then filed a petition with the United States Tax Court within the time limit specified by 26 U.S.C. §6213(a).[1] The Tax Court ruled against Petitioners on October 6, 1981, in a final decision disposing of the entire case. Petitioners filed a timely motion for reconsideration on November 4, 1981,

---

[1] The Tax Court had jurisdiction over this case pursuant to 26 U.S.C. §§7442 and 6213 and to Rule 13(a) of the Rules of Practice and Procedure of the United States Tax Court.

which was denied by the Tax Court on November 5, 1981. Petitioners filed a timely appeal from the decision of the Tax Court to the Ninth Circuit on December 29, 1981, pursuant to 26 U.S.C. §7483 and F.R.A.P. Rule 13(a).[2] The Ninth Circuit affirmed the Tax Court's decision on July 21, 1983.

Section 1620(a) of the ANSCA makes revenues received by native Americans under the ANSCA exempt from taxation. Legislative history of 43 U.S.C. §1602(a) is devoid of any suggestion that Congress intended that revenues received by native Americans for legal assistance in formulating the Act should not be included in the taxation exemption granted to natives "through dividend distributions or in any

---

[2] The Ninth Circuit had jurisdiction over the case pursuant to 26 U.S.C. §§7482 and 7483.

other manner." 43 U.S.C. §1620(a) (emphasis added). Despite this dearth of legislative authority, the Ninth Circuit determined that the "spirit" of the statute would not permit Mr. Paul, even though a Native who was distributed revenues under the ANSCA, to claim the taxation exemption granted by the statute. Paul v. Commissioner of Internal Revenue, Slip Op. at 3. But even if Section 1620(a) granting Petitioners a taxation exemption were not clear on its face, and did contain a dubious expression of Congressional intent, the precedents of the Court require construction in favor of Petitioner. This Court has held that where statutes contain doubtful expressions dealing with Indians, they must be resolved in favor of the Indians. The Ninth Circuit failed to abide by this mandate, and ignored proper rules of

statutory construction by reading in an interpretation not supported by legislative history. Accordingly, the Ninth Circuit's decision should be reversed.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Violates Established Principles of Statutory Construction by Overlooking the Plain Language of the Statute and By Reading In An Interpretation Without Support in Legislative History.

A. The Ninth Circuit's Opinion Improperly Gives Deference to the the Erroneous Construction of Section 1620(a) Made by the Commissioner and By the Tax Court.

The IRS' interpretation of the Alaska Native Claims Settlement Act as affirmed by the Tax Court is not entitled to any deference from this Court. None of the bases for according such deference to an administrative agency applies to the present case. The principle according such deference applies only when the particular

agency is charged with enforcement and administration of the statute, and even then would not be followed if there are compelling indications that it is erroneous. E. I. du Pont de Nemours & Co. v. Collins, 432 U.S. 46 (1977); Quern v. Mandley, 436 U.S. 725 (1978). Moreover, such deference is constrained by the Court's obligation to honor the clear meaning of the statute, as revealed in its language, purpose and legislative history. Southeastern Commmunity College v. Davis, 442 U.S. 397 (1979). Such judicial deference is appropriate principally when an administrative body's construction is long-standing and has been consistently applied. United States v. National Association of Securities Dealers, Inc., 422 U.S. 694 (1975).

In the instant case, the Commissioner, the Tax Court, and the Ninth

Circuit have followed an interpretation of the Alaska Native Claims Settlement Act which would limit the express exemption in order to deny the specific exemption claimed by appellant. The Internal Revenue Service, however, is not the agency charged with enforcement of any part of the Alaska Native Claims Settlement Act. Furthermore, its interpretation is not long-standing, but is peculiar to this case.

The inclusion of a tax exemption in the Alaska Native Claims Settlement Act does not give rise to a claim of deference to an interpretation advanced by the Internal Revenue Service. While the IRS may claim expertise in taxation generally, it has no expertise in native claims settlement which would give rise to the presumption that it is entitled to declare Congressional intent in that matter. The

agency charged with the implementation of the Alaska Native Claims Settlement Act is the Secretary of the Interior. Accordingly, only that office may advance an interpretation which is entitled to deference before this Court.

Court decisions which have discussed the Alaska Native Claims Settlement Act have stated the general rule set forth above regarding executive construction. In Hamilton v. Butz, 520 F.2d 709 (9th Cir. 1975), the Ninth Circuit held that amounts received under the Alaska Native Claims Settlement Act should not be included in the resources of individual natives in determining their eligibility for food stamps. The Court rejected the argument that it should accord "great weight" to the interpretation of the Act advanced by the Secretary of Agriculture, ruling that only the Secretary of

Interior, charged with administration of the Act, was entitled to such defense.

Similarly, in Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alaska 1977), the court considered the standard of review to be applied when interpreting a provision of the Act which allowed the Secretary of Interior to reserve certain easements. In refusing to adopt the limited standard of review proposed by the Secretary of Interior, the Court noted three factors: (1) the interpretation of the statute by the administrative agency was not "long-standing," United States v. National Association of Securities Dealers, 442 U.S. at 719; (2) the views of the administrative agency were not made known in the committee hearings, Zuber v. Allen, 396 U.S. 168 (1969); and (3) no administrative regulation was being interpreted. Because of these

factors, the court ruled that it would not limit its review or defer to the interpretation advanced by the agency.

Applying these criteria to the instant case, it is clear that the Court should not accord any deference to the interpretation advanced by the Commissioner on the basis of his regulatory power in the realm of taxation. Rather, it should adhere to the other, more persuasive rules of statutory construction in reaching its decision.

B. Section 1620(a) On Its Face Exempts Revenues Received by Petitioners From Taxation.

The Ninth Circuit erred in holding that the funds received by Petitioner from the Alaska Native Fund were subject to federal taxation. 43 U.S.C. §1620(a) clearly and unequivocally exempts from all local, state and federal taxation all

revenues received from that Fund by individual natives through dividend distribution "or any other manner."

> Revenues originating from the Alaska Native Fund shall not be subject to any form of federal, state, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

43 U.S.C. §1620(a) (emphasis added).

The plain meaning of this statute is clear. It expressly creates a blanket exemption immunizing the entire Alaska Native Fund from federal, state or local tax liability, to the extent that it is distributed to qualified natives--in any manner. This exemption applies when a regional corporation, a village corporation, or an individual native receives "revenues" originating from the Alaska Native Fund. Receipt can be in the form of a dividend distribution "or in any

other manner."[3] Thus, the Ninth Circuit erred when it denied the tax exemption to Petitioner because "Paul did not receive the payments as a part of a distribution to qualified Natives." Slip Op. at 4. Revenues received in "any other manner" by native Americans are also exempt from taxation under Section 1620(a).

Precedent in this Court clearly supports the principle that where the language of a statutory provision is clear on its face, that language cannot be ignored. Indeed, when a statute is clear on its face, the need for further inquiry into the morass of history and intent is precluded. See United States v. Oregon, 366 U.S. 643, 648 (1961):

> Having concluded that the provisions of §1 are clear and unequivocal on their face, we find no need to resort

---

[3] The exemption does not cover income from investments of that revenue. 43 U.S.C. 1620(a).

> to the legislative history of the Act.

Accord, Ernst & Ernst v. Hochfelder 425 U.S. 185, 200-01 (1976), where the Supreme Court, in construing Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)), and based upon United States v. Oregon, indicated that where the languge of a statutory provision is clear, further inquiry may not be necessary. Indeed, if Congressional intent is to be ascertained at all, that ascertainment must rest primarily upon the language of the section to be construed.

C. The Ninth Circuit's Opinion Ignored Established Principles of Statutory Construction.

1. Since the Statute Was Unequivocal, the Court's Resort to Legislative History was Improper.

The Ninth Circuit has adopted the suggestion from the Internal Revenue Ser-

vice and the Tax Court that it is free to ignore the clear command of Congress as set out in Section 1620(a). This it cannot do. Although some recent cases have indicated that a court may not be entirely precluded from the use of extrinsic evidence to explain words in a statute (See, e.g., Doyon, Ltd. v. Bristol Bay Native Corp., 569 F.2d 481, 494 (9th Cir. 1978)), the literal language of a statute should prevail, absent a clearly expressed legislative intent to the contrary. Thus, this Court recently affirmed the primacy of the plain language of a statue in Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980), where it stated:

> We begin with the familiar canon of statutory construction that the starting point for interpreting a statue is the language of the statute itself. Absent a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.

447 U.S. at 108 (emphasis supplied).

The Ninth Circuit's decision below ignores its own precedent set in the case of Paul v. Andrus, 639 F.2d 507 (9th Cir. 1980). There, the court earlier refused to ignore the "clear command" of another section of the Alaska Native Claims Settlement Act, 43 U.S.C. §1609, stating:

> Plaintiff's suggestion conflicts directly with the words of §1609. That section expressly applies to "any civil action." We are not free to ignore such a clear command.

639 F.2d at 508.

The ANCSA is broad and sweeping both in concept and language. This court in Paul v. Andrus recognized this broad scope when it held that Section 1609 meant what it said--"[A]ny civil action...shall be barred." The command of Section 1620(a) is equally broad and clear--"Revenues originating from the Alaska Native Fund shall not be subject to any form of

Federal, State or local taxation at the time of receipt by a[n] . . . individual Native through dividend distributions or in any other matter." The court must heed the "clear command" of Section 1620(a) just as it heeded the "clear command" of Section 1609. The interpretation of Section 1620(a) suggested by the Internal Revenue Service, as adopted by the Tax Court and affirmed by the Ninth Circuit flies in the face of this principle of law. In addition to ignoring these basic principles, the Ninth Circuit discarded the plain language of the statute and affirmed the Tax Court's dubious analysis of legislative history which interpreted nonexistent ambiguities into the clear language of the statute.

2. The Court's Decision Improperly Renders a Portion of the Act's Language Nugatory.

Section 1620(a)'s exemption from taxation applies to money received by qualified natives from the Alaska Native Fund through dividend distributions "or in any other manner." The Ninth Circuit's decision would render these words meaningless and nugatory, thus violating a basic canon of statutory construction.

The Tax Court acknowledged that Fred Paul could receive funds from the Alaska Native Fund only through distribution through native corporations pursuant to 43 U.S.C. §1605-06 or through a distribution pursuant to 43 U.S.C. §1619. Appendix B at 18-22. The money at issue was received through Section 1619.

The Tax court discussed at length the statutory method by which most of the funds from the Alaska Native Fund were to be distributed to individual natives pursuant to Sections 1605-06. Most funds,

except those set aside for distribution pursuant to Section 1619, are distributed from the Fund to regional corporations set up pursuant to the Alaska Native Claims Settlement Act. §1605(c). The statute sets out an elaborate scheme by which some of the funds received by the regional corporations will be distributed to the individual natives who comprise the stockholders of those corporations. Id. §1606(g)-(m). All such distributions to individuals are made to those individuals with respect to their stock in the regional (or in some cases, village) corporations. Id.

The Ninth Circuit would construe Section 1620(a) to exempt from taxation only those revenues received by individual natives through the regional corporation distribution system by which they receive funds distributed to them with respect to

their stock in those corporations set up by the Act. That construction would totally ignore the broad language of Section 1620(a). Had Congress intended to exclude revenue received from the Alaska Native Fund by an individual native pursuant to Section 1619, it could easily have accomplished this purpose by appropriate language. It did not do so. The language is "in any other manner whatsoever"--not "in any other manner whatsoever, except through payments pursuant to Section 1619."

Any interpretation of a statute which would serve to render one portion of a statute inoperative or nugatory should not be adopted if any other interpretation is allowable. Colautti v. Franklin, 439 U.S. 379 (1979). If possible, every word used by Congress is to be given some effect within the regulatory scheme of the Act in

question. Reiter v. Sonotone Corp., 442 U.S. 330 (1979). In interpreting an act of Congress, the courts are bound to adopt an interpretation which gives effect to all parts of the act. See Administrator, Federal Aviation Administration v. Robertson, 422 U.S. 255 (1975).

The Ninth Circuit's decision has ignored these basic principles of construction. There is no basis for its creative interpretation of otherwise simple language. Conversely, there is certainly a basis for an inference that the "any other manner" language was specifically intended to include payment for services rendered by a qualified native, which helped to establish the fund and benefitted the Alaska natives generally. This principle of construction mandates interpretation in favor of Petitioners to avoid rendering a significant portion of

the statutory language meaningless.

3. The Court's Decision Failed to Apply the Principle that Inclusion of an Express Exception to a Statutory Provision Excludes Additional Exceptions.

The Ninth Circuit's decision ignores the principle of "expressio unius est exclusio alterius," that inclusion of an express exception to a statutory provision excludes additional exceptions. Section 1620(a) clearly indicates that the tax exemption "shall not apply to income from the investment of such revenues." That exception to the general exception for taxation is exclusive.

It is a fundamental principle of statutory construction that when a legislature expresses one exception to a statutory provision, it thereby excludes all others. See, e.g., Andrus v. Glover Construction Co., 446 U.S. 608, 616-17

(1980), where the Supreme Court applied this principle to a similar attempt to engraft additional exemptions to a general statutory prohibition. There, this Court stated:

> Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of a contrary legislative intent.

Applying this principle to the case in question, it is clear that the Ninth Circuit erred by attempting to graft on to the last sentence of Section 1620(a) a further exception to the tax exemption.

D. The Ninth Circuit's Decision Has No Support in Legislative History or Congressional Intent.

1. The History and Evolution of Section 1620(a) Do Not Support the Tax Court's Interpretation.

a. The Section 1620(a) Exemption From Taxation Was Progressively Broadened at Each Stage of the Legislative Process.

The legislative history of the Alaska Native Claims Settlement Act provides no foundation for limiting the exemption from taxation solely to those distributions from the Alaska Native Fund which are made through the regional corporation system set out in Sections 1605-06. Indeed, the legislative history of Section 1620(a) compels the conclusion that the tax exemption in that section was ever broadened at each step of the legislative process. The change to the conference version of that section, although not significant within the context of the total statute or of the total tax exemption, is extremely significant to this particular case.

The original House bill did not contain a provision similar to Section 1620(a), providing individual natives with a tax exemption. Section 6(m) of that bill, H.R. 10,367, 92nd Cong., 1st Sess.

§6(m), in 117 Cong. Rec. 37,064 (1971), read as follows:

> Monies received by the [regional] corporation from the Alaska Native Fund shall not constitute taxable income to the corporation for any purpose. This exemption shall not apply to income from the investment of such monies.

However, the House Bill was amended in the Senate to provide that compensation paid to individual natives would also be exempt from taxation. Section 27(a) of the Senate Bill read as follows:

> The compensation paid to Natives pursuant to §5(a) of this Act, and any interest earned with respect thereto while such funds are deposited in the fund or are invested by the Secretary pursuant to §5, shall not be subject to any form of federal or state taxation either (1) at the time of receipt or (2) upon distribution to any native corporation or individual native whether directly by a per capita payment or indirectly through such corporation or corporations. For purposes of this subsection, the first dividend payments or other cash distributions made by any native corporations shall be deemed to be distributions out of its share of funds derived from §5(a), including interest, until such share has been fully distributed.

S.35, 92nd Cong., 1st Sess. §27(a), 117 Cong. Rec. 38,470 (1971).

The Conference Committee then rejected the Senate version upon which the tax court relied and further broadened the exemption to its present coverage of "revenues originating from the Alaska Native Fund [received] by a[n] . . . individual Native through dividend distributions or in any other manner." 43 U.S.C. §1620(a). This broadening of the exemption is clearly seen at each step of the legislative process.

b. The Changes Made to the Exemption Demonstrate that the Ninth Circuit's Interpretation is Incorrect.

The Tax Court's opinion, as approved by the Ninth Circuit, seized upon comments related to the Senate Bill to attempt to bolster an argument that Section 1619

distributions were not covered by Section 1620(a). Appendix B at 27-28. However relevant the Senate Report explanation might have been to Section 27 of the Senate Bill, those comments are inapplicable to the final version of the statute. When the Conference Committee met, it rejected the Senate Bill's treatment of the tax exemption, and adopted present Section 1620(a). That section in the final bill and the Senate Bill's treatment of the tax exemption contrast sharply in several ways which are significant to the present case.

i. The Senate Bill referred to "compensation" paid to natives; Section 1620(a) refers to "revenues" originating from the Alaska Native Fund. The Tax Court failed to recognize this distinction.

The Tax Court placed great emphasis

upon that portion of the Senate Report which speaks of Section 27 of the Senate amendment as providing a tax exemption for natives who receive compensation for the extinguishment of land claims. Appendix B at 19. That explanation is irrelevent to the finally enacted statutory exemption, which is couched solely in terms of "revenues", and not "compensation."

"Compensation" and "revenue" are distinct. "Compensation" is, as the Tax Court correctly stated, a relatively narrow concept, usually carrying with it some sort of quid pro quo. Thus, Black's Law Dictionary 256 (5th ed. 1979) defines "compensation" in the sense of making a person whole:

> Indemnification; payment of damages, making amends, making whole, giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for serves rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased.

The term "compensation" in the Senate version of the Settlement Act most nearly equates to the use of that term in the normal "eminent domain" proceeding. 3 Nichols' Law of Eminent Domain §816 at 8-119-20 (Rev. 3rd ed. 1981) defines "compensation" in eminent domain proceedings:

> "Compensation," as used in the constitutional provision as a limitation upon the power of eminent domain, implies a full and complete equivalent (usually monetary) for the loss sustained by the owner whose land has been taken or damaged.

This principle has been specifically applied by this Court to the taking of land held by Indians and Indian tribes. See, e.g., United States v. Klamath and Moadoc Tribes, 304 U.S. 119 (1937). It has likewise been followed in numerous state eminent domain cases. See, e.g., Schlottman v. Wharton County, 259 S.W.2d 325 (Tex Civ. App. 1953); Port of New York Authority v. Howell, 59 N.J. Super. 343,

157 A.2d 731, 733-34 (1960); and Coachella Valley County Water District v. Dreyfuss, 91 Cal. App. 3d 949, 953, 154 Cal. Rptr. 467, 469 (1979).

In contrast, "revenue" is a broader term. Again referring to Black's Law Dictionary at 1185, the term is defined as:

> Return or yield, as of land; profit, as that which returns or comes back from an investment; the annual or periodical rents, profits, interest or issues of any species of property, real or personal; income of individual, corporation, government, etc.

The Oxford English Dictionary (1971 ed.) at 597 also includes the following relevant definitions of "revenue":

> 2. The return, yield, or profit of any lands, property, or other important source of income.
>
> 3. That which comes in to one as a return from property or possessions, esp. of an extensive kind; income from any source (but esp. when large and not directly earned).
>
> 4. The collective items or amounts which constitute an income, esp. that

> of a person having extensive landed possessions, a ruler, city, state, etc.
>
> 5. An income; an amount of money regularly accruing to one; a stipend, salary.

Courts attempting to define the term "revenue" have been plagued by the extreme breadth of the term, whether used in the private or public context. Thus, for example, in Bennett v. City of Mayfield, 323 S.W.2d 573, 577 (Ky. 1959), the court stated:

> Ordinarily, the word "revenue" is regarded as meaning income, but the meaning is more comprehensive. Webster defines the word to mean also "a source of income" and "that which returns or comes back".

Likewise, in Doty v. L.T. Campbell Construction Co., 43 So.2d 278, 278-79 (La. App. 1949), the court stated:

> The word "revenue" is one used in many senses. One of the recognized meanings being, see Webster's dictionary, "that which returns, or comes back, from an investment." Again the "annual rents, profits, interest, or issues of any species of property, real or personal" . . . .

> Sufficient for the decision in the case before us is to say that the word "revenue" like many other in the English language, is ambiguous in meaning and often the meaning which should be ascribed to it is best determined by the examination of the words with which it is connected.

See also State Highway Commissioner v. Spainhower, 504 S.W. 2d 121 (Mo. 1973), defining "revenue" from Webster's New International Dictionary in a broad sense.

As the above illustrates, the term "revenue" in Section 1620(a) is clearly broader than the "compensation" concept of Section 27 of the Senate bill, upon which the Senate Report's comment was based. The Tax Court totally failed to recognize this distinction.

ii. The "compensation" referred to in the Senate bill was specifically tied to payments made to natives pursuant to Section 5(a) of the Act [now 43 U.S.C. §1605]. Section 1620(a) does not include such a restriction, but refers broadly to

"revenues originating from the Alaska Native Fund," and extends this concept to cover all money received by qualified natives from the Alaska Native Fund. It does not restrict the exemption to the specific methods of distribution through the regional corporations set out in what is now Section 1605(c) and Section 1606. A portion of the Alaska Native Fund provided the source of the funding to petitioner pursuant to Section 1619.

iii. While the exemption in Section 27 of the Senate bill was tied to payments to natives which were either direct "per capita" distributions or payments received indirectly through corporations, Section 1620(a) eliminated any reference to per capita distribution and broadened its scope to include revenue received by "a[n] . . . individual native through dividend distribution or in any

other manner." This change represented a clear intention not to restrict the exemption to per capita distributions or distributions through native corporations under the scheme of Sections 1605(c) and 1606.

iv. Section 1620(a) placed a new limit on the tax exemption not found in the Senate bill, but which was in the House bill as it applied to corporations only. The Conference Committee added the last sentence of Section 1620(a), making income from revenues received by both individual natives and native corporations taxable to them. The addition of this sentence is a clear indication of where Congress intended to draw the line.

c. The Conference Report Does Not Support the Ninth Circuit's Interpretation.

The Conference Report on the Alaska

Native Claims Settlement Act does not support the Tax Court's conclusion. That report stated, with regard to Section 1620, that it "parallels §27 of the Senate amendment and with some deletions and modifications is substantially the same." House Conf. Rep. No. 746, 92nd Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News 2,247, 2,259. The report clearly stated that the conference version included both deletions and modifications. It then concluded that the two versions were "substantially" the same. "Substantially" the same is a far cry from "identical." At most, remarks in the Conference Report merely support the conclusion that changes made in the tax exemption section were not deemed to be significant in the context of this highly complex legislation. The Report clearly acknowledged that there were changes between the Senate

version and Section 1620(a). It does not provide a basis to conclude that those changes had no significance whatsoever.

d. Legislative History Contains No Basis for Overriding the Clear Language of Section 1620(a).

The legislative history in this case does not support the Ninth Circuit's position. It is at best ambiguous. A legislative history which is ambiguous at best cannot justify a statutory interpretation which varies from the clear language of the statute itself.

Where the plain language of a statutory provision is clear, only clear evidence of a contrary congressional intent could justify a conclusion that the plain language should be disregarded. See, e.g., Consumer Product Safety Commission v. GTE Sylvania, 447 U.S. at 108.

The Commissioner and the courts below

have attempted to circumvent the clear language of the statute through what is at most an ambiguous legislative history. However, in order to ascertain Congressional intent from an ambiguous legislative history, the Court must return to the statutory language itself to resolve the questions which might arise. Sutherland, the preemiment authority in that field, states: "Where legislative history is itself ambiguous, a court must look to intrinsic aids." C. Sands, Sutherland Statutory Construction, ¶48.01 at 182 4th ed. 1974), citing Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971); and Dent v. St. Louis-San Francisco Ry., 406 F.2d 399 (5th Cir. 1969). The primary intrinsic aid to construction is, of course, the pertinent language of this statute.

United States Supreme Court Justice

Robert Jackson in United States v. Public Utility Commission, 345 U.S. 295, 319 (1953) (Jackson, J. concurring) indicated the problem that results from an attempt to psychoanalyze Congress in the absence of clear, unambiguous guidelines as to its intent. He stated that such attempts should be avoided, as those efforts invariably resulted in the "creation of statutes" and not in their interpretation. The Ninth Circuit has done precisely that. It seeks to create its own law to fill what it perceives to be a vacancy left by Congress. The legislative history does not support this effect.

2. Congressional Intent as Expressed in the Alaska Native Claims Settlement Act Does Not Support the Ninth Circuit's Interpretation.

Congress recognized the need for the Alaska Native Settlement Act in stirring

language:

> Congress finds and declares that--
> (a) There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

43 U.S.C. §1601(a). It also specifically declared that it was a policy of that Act to accomplish that settlement "with maximum participation by Natives in decisions affecting their rights and property." Id. §1601(b) (emphasis supplied).

Petitioner Fred Paul, as a Native, as an attorney, and as an attorney for Natives, participated to the fullest in the decisions affecting the settlement of the aboriginal land claims embodied in the Alaska Native Claims Settlement Act. Congress knew that Fred Paul's actions leading to enactment of the Act were undertaken both as an attorney and as an individual Native. For example, on one of

the occasions when he testified before Congress on the Act, he identified himself as follows:

> My name is Frederick Paul. I am the attorney for the Arctic Slope Native Association. I am a member of the Tlingit-Haida nation and as a matter of fact, a member of the Tee-Hit-Ton Tribe of the Tlingit-Haida Nation. I have been involved in Indian problems for many, many years.

Alaska Native Land Claims: Hearing Before the Comm. on Interior and Insular Affairs, United States Senate on S.2906, S.1964, S.2690, and S.2020 and Related Bills, 90th Cong., 2d Sess. 321 (1968). His participation clearly advanced the purposes of that Act set out above. It is entirely consistent with these purposes and with Congress' knowledge of the participation of Fred Paul in the process of enacting the ANCSA that Congress intended that the tax exemption of Section 1620(a) should apply to money which he, as a Native, received out of the Alaska Native Fund

pursuant to Section 1619. The Ninth Circuit's decision is without support for a contrary conclusion.

II. The Decision Below Violates This Court's Clear Mandate That Statues Governing the Rights of Native American Must be Construed in Their Favor.

The Ninth Circuit's decision clearly departs from the principle established by this Court that treaties, statutes and contracts governing the relationship of governmental bodies to native Americans must be construed in favor of the natives. DeCoteau v. District County Court, 420 U.S. 425 (1975). The Alaska Native Claims Settlement Act is not primarily a taxation statute requiring construction in favor of the IRS, but is the statutory expression of a settlement of aboriginal rights between the United States and the Alaska Natives, including Petitioner Fred Paul.

Accordingly, any ambiguities inherent in the statutory exemption must be resolved in favor of the Petitioners. This Court has consistently held that such provisions should be liberally construed, with any doubtful constructions resolved in favor of the native. Bryan v. Itasca County, 426 U.S. 373, 392 (1976).

In DeCoteau, this Court reiterated the oft stated principle that ambiguous expressions in statutes or treaties dealing with American natives are to be resolved in their favor. 420 U.S. at 444. See also McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1972). The DeCoteau Court specifically stated that a decision contrary to this principle must result only from an expression "on the face of the act or be clear from the surrounding circumstances and legislative history." DeCoteau, 420 U.S. at 444.

Accord, Mattz v. Arnett, 412 U.S. 481, 505 (1973).

This general principle of construction has been specifically applied to interpretation of the Alaska Native Claims Settlement Act. In Alaska Public Easement Defense Fund, 435 F. Supp. 664 (D. Alaska 1977), the Federal District Court made the following statement regarding resolution of ambiguities in the Alaska Native Claims Settlement Act:

> Thus, although generally the Alaska Natives were not dependent in the sense that they were on reservations, their fate rested in the hands of Congress and they were dependent upon its protection and good faith. In these circumstances the language used, if ambiguous, should be resolved in their favor.

435 F.Supp. at 671.

The court in Alaska Public Easement specifically noted that resolution of the Act in favor of the natives is not dependent upon their ignorance, depen-

dence, or need for supervision, but that it applied equally to native corporations and groups which were well financed, profit-making enterprises. In support of this statement, it cited Squire v. Capoeman, 351 U.S. 1, 6-7 (1956), where this Court stated certain general rules applicable to the resolution of disputes between American natives and the Internal Revenue Service. The Squire Court began by stating the general rule that:

> Indians are citizens, and in ordinary affairs of life, not governed by treaties or remedial legislation, they are subject to the payment of income tax as are other citizens.

Id. at 6 (emphasis added). While acknowledging the general rule that exemptions to tax laws should be clearly expressed, the court reiterated Chief Justice Marshall's statement in Worcester v. Georgia, 33 U.S. (6 Pet.) 515 (1832), that "the language used in treaties with the Indians should

never be construed to their prejudice". 33 U.S. at 582. The Court then ruled that taxation was barred by the admittedly ambiguous terms of the statute in question.

Here, the exemption claimed by Petitioners is found in a "treaty or statute." It is clearly expressed and supported by the overall tenor of the Act, its purposes, and its legislative history. If an ambiguous statute such as that construed in Squire must be resolved in favor of the rights of the natives, it follows a fortiori that Section 21(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. §1620(a), must be resolved in favor the express language of the exemption. Thus Petitioners' claim of exemption must be allowed.

III. Equitable Considerations Require that Petitioners be Relieved from the Devastating Consequences of the Ninth Circuit's Holding that the Moneys Received Under the Act were not

Exempt from Taxation.

The preceding portions of this Petition have focused exclusively on the myriad legal principles that support a finding that the moneys received under the Act are exempt from taxation. However, it would be blind justice indeed which predicated its decision solely on these grounds, without an awareness of the very real, practical ramifications a holding adverse to the Petitioners will import.

Fred Paul is 69 years old. He is legally blind. He has devoted his entire life to vindication of the rights of the Alaskan natives. His compensation for these services has generally been substandard by any objective scale of attorney's fees. Oftentimes, he has received no remuneration at all.

Aileen M. Paul is 64 years old. She is a nurse by profession and has devoted

much of her life to the service of the ill and infirm. In early 1975, Mrs. Paul was single. She owned a home free and clear and had a small number of investments to provide some measure of security in her future years.

The Pauls were married in 1975, within weeks of the time when Mr. Paul received the payment that is at issue in this case. They filed a joint return for 1975, to which was attached a statement that disclosed receipt of this payment and took the position that it was exempt from taxation. By filing this joint return, Mrs. Paul became jointly and severally liable for any delinquency later assessed with respect to that return.

Mrs. Paul was unaware that her signature on the joint return would subject her to personal liability for any such deliquency. However, because of the

statement attached to the return which disclosed the payment, she has effectively been precluded from relying on the "innocent spouse" statute to protect her separate assets from levy by the IRS. 26 USC §6013(e), particularly §6013(e)(2)(B). What irony! The wife of a conscientious and forthright taxpayer, who discloses receipt of an item which he in good faith contends is non-taxable, is placed in a disfavored position under the law. The wife of a scoundrel, who gives no inkling on his return that he has embezzled funds, can escape liability for tax on those funds. But not Mrs. Paul.

The IRS has initiated collection activities to satisfy the tax obligations of the Pauls. Petitioners' attorneys are currently marshaling financial information in anticipation of an ultimate offer in compromise which will be presented to the

IRS. The money received by Fred Paul in 1975 is gone, consumed primarily by expenditures in his legal practice, which has never been but marginally profitable. The Pauls' major asset is the separate property house of Mrs. Paul, to which the government's tax lien has already attached. All of their assets combined will satisfy barely one-half of the tax liability involved. Seizure of the assets will itself give rise to further tax liability, since the assets have appreciated in value. There will be nothing left from which to satisfy this new tax liability.

If ever circumstances have imperatively demanded the interposition of this Court in furtherance of justice, this is the case. In re Chetwood, 165 U.S. 443, 462 (1897). Petitioners have devoted their lives to the betterment of society and their fellow man. If this Petition is

denied, they will be deprived of their home, their security and their pride. They will be cast virtually penniless upon the mercy of the very society to which they have contributed so selflessly their entire lives.

Let not their plea go unheeded.

CONCLUSION

The Ninth Circuit has chosen to ignore not only the plain language of the Alaska Native Claims Settlement Act, but also this Court's established rules of statutory construction, legislative history, the intent of Congress, and the common sense answer to the question posed. This broad and sweeping statute enacted for the benefit of the natives of Alaska must be construed, like all such statutes, in favor of members of that group. This is not a revenue statute, but an Indian

statute. The Ninth Circuit's interpretation subverts the protection of the Act rightfully claimed by native American petitioners.

For these reasons a writ of certiorari should issue to review the decision of the Ninth Circuit.

DATED: October 19, 1983

Respectfully submitted,

DONALD P. SWISHER
Counsel of Record for
Petitioners Frederick
Paul and Aileen M. Paul

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERICK PAUL and AILEEN M. PAUL,
Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

On Appeal from the United States Tax Court
Argued and Submitted June 6, 1983

Before: ANDERSON and FLETCHER, Circuit Judges, and JAMESON,* District Judge

This is an appeal from a decision of the Tax Court holding that amounts received by appellant Frederick Paul in 1975 from the Alaska Native Fund as compensation for legal services are not exempt from Federal income taxation under the provisions of the Alaska Native Claims Settlement Act (ANCSA), Pub. L. 92-203, 85 Stat. 688, codified at 43 U.S.C. §1601-27 (1976). We affirm.

Paul is an attorney, admitted to

practice in Washington and Alaska. He specializes in the practice of Indian law and holds himself out as an expert in that field. He is a one-quarter Tlingit Indian and a member of the Tee-Hit-Ton Tribe of the Tlingit Nation. He is a "native" within the meaning of the ANCSA[1] and is duly enrolled pursuant to that Act.

In 1966 Paul entered into an agreement to represent a group of Alaska natives in seeking a settlement of claims against the United States and others. He spent over five years in this legal work. Much of the work involved matters settled by the passage of the ANCSA. For these services in 1975 he was granted compen-

---

[1] Section 1602 provides in pertinent part: "(b) 'Native' means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian . . . ."

sation by the Chief Commissioner of the United States Court of Claims in the amount of $275,000. This sum was paid to Paul from the Alaska Native Fund.[2]

Paul did not include the money paid to him from the Alaska Native Fund in the gross income reported on his tax return for 1975. He did attach a statement asserting that "under the terms of 43 U.S. Code 1620, such payment is exempt because he is an enrolled native within the meaning of" ANCSA. 43 U.S.C. §1620 provides in pertinent part:

> (a) Fund revenues exemption; investment income taxable.

---

[2] 43 U.S.C. §1619 provides that the Secretary of the Treasury shall hold in the Alaska Native Fund moneys sufficient to pay claims "for attorney and consultant fees and out-of-pocket expenses" allowed by the Chief Commissioner of the United States Court of Claims; that the "Chief Commissioner shall certify to the Secretary of the Treasury . . . the amount of each claim

(Footnote continued)

> Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

In the notice of deficiency the Commissioner determined that the amount received as compensation for legal services was includable in Paul's gross income. The Commissioner determined a deficiency in the amount of $118,132.

Paul petitioned the Tax Court for a redetermination of the deficiency. Following a trial on stipulated facts and additional testimony of Paul, and the

---

[2](continued)
allowed and the name and address of the claimant," and that the "Secretary of the Treasury shall pay to such person from the Alaska Native Fund the amounts certified."

filing of post-trial briefs, the Tax Court issued findings of fact and an opinion holding that the amounts in question were not exempt from the federal income tax.

Paul contended before the Tax Court, as he does on this appeal, that the "literal language" and "plain meaning" of §1620(a), i.e., the phrase "in any other manner," and a construction of the statute in favor of an "Alaska Native" compel a conclusion that funds received by Paul, a qualified Alaska native, from the Alaska Native Fund are tax exempt. The Tax Court, in a well considered opinion, recognized that read literally and wholly apart from other provisions of the ANCSA section 1620(a) may appear to exempt from taxation payments to Paul from the Alaska Native Fund for legal services, but noted the "familiar rule,

that a thing may be within the letter of the statute, because not within its spirit, nor within the intention of its makers," quoting from Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892).

After a careful analysis of the entire statute and the legislative history, the Tax Court concluded that the special provisions of section 1619 "for the payment of attorney fees, under which petitioner received the money in question, are entirely separate from the scheme for general distribution of the Alaska Native Fund to Native Corporations and individual Natives;" and that "section 1620(a) refers only to amounts generally distributed to Native Corporations and individual Natives for the settlement of land claims and not to amounts specifically set aside and paid

as compensation for legal services."

We agree with the Tax Court. Payments for legal services under section 1619 may be made to non-Indians as well as Alaska Natives. The Tax Court found nothing in the Act to indicate an intent by Congress to exempt from taxation "amounts received by an attorney for legal services simply because he happened to be a Native." Paul did not receive the payments as part of a distribution to qualified Natives. As the Tax Court properly concluded, payments for legal services received by Paul pursuant to Section 1619 "fall outside the scope of the tax exemption provided in section 1620(a)."[3]

---

[3] The Tax Court considered the general rule that doubtful expressions in statutes dealing with Indians are to be resolved in their favor. See, e.g., DeCoteau v. District County Court, 420 U.S. 425, 444 (1975). The court noted,

(Footnote continued)

AFFIRMED.

*Honorable William J. Jameson, Senior United States District Judge, District of Montana, sitting by designation.

---

[3](continued)
however, that we are here concerned with the application of section 1620(a) to a payment under a special provision for attorney fees rather than under a provision pertaining to the Alaska Natives generally.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERICK PAUL AND AILEEN M. PAUL, Petitioners-Appellants,	)	Tax #15502-79 No. 82-7005
vs	)	JUDGMENT
COMMISSIONER OF INTERNAL REVENUE, Respondents-Appellee,	)	WESTERN WASHINGTON

Upon Petition to Review a Decision of The Tax Court of the United States,

This Cause came on to be heard on the Transcript of the Record from The Tax Court of the United States, on June 6, 1983 and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Decision of the said Tax Court of the United States in this Cause be, and hereby is AFFIRMED.

Filed and entered July 21, 1983

APPENDIX B

77 T. C. No. 55

UNITED STATES TAX COURT

FREDERICK PAUL AND AILEEN M. PAUL,
Petitioners
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 15502-79.
Filed October 5, 1981

Petitioner Frederick Paul is a "Native" within the meaning of the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, 43 U.S.C. sec. 1601, et seq. In 1975, he received $275,095 as compensation for legal services from moneys reserved in the Alaska Native Fund for the payment of attorney and other fees. Under 43 U.S.C. sec. 1620(a), revenues originating from the Alaksa Native Fund are exempt from any form of taxation at the time of receipt by an "individual Native through dividend distributions or in any other manner."

Held: Amounts received by petitioner from the Alaska Native Fund in 1975 as compensation for legal services are not exempt from federal income taxation.

Kenneth W. Jennings, Jr., John M. Steel, and M. John Bundy, for the petitioners.

Thomas N. Tomashek, for the respondent.

FEATHERSTON, Judge: Respondent determined a deficiency in the amount of $118,132 in petitioners' Federal income tax for 1975. The only issue for decision is whether an amount received by petitioner Frederick Paul as compensation for legal services is exempt from Federal income taxation pursuant to the provisions of the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, 43 U.S.C. sec. 1601, et seq. (hereinafter the ANCSA or the Act).[1]

---

[1] All section references are to Title 43 of the United States Code (1976 ed.), pertaining to the ANCSA, unless otherwise noted.

Petitioner is an attorney at law admitted to practice in the States of Alaska and Washington. He specializes in the practice of Indian law and holds himself out as an expert in that field. Petitioner is himself a one-quarter Tlingit Indian and is a member of the Tee-Hit-Ton Tribe of the Tlingit Nation. He is a "Native" within the meaning of the ANCSA and is duly enrolled pursuant to that Act.[2]

In 1966, petitioner entered into an agreement to represent a group of Alaska Natives in seeking a settlement of certain claims against the United States

---

[2] Secs. 1602 and 1604 provide in pertinent part as follows:
Section 1602. Definitions
For the purposes of this chapter, the term--
* * *
(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including
(Footnote continued)

and other parties.[3] He spent in excess of 5 years engaged in legal work on behalf of those Natives. For these services, petitioner was granted compensation under the ANSCA by the Chief Commissioner of the United States Court of Claims[4] in the amount of $275,095 in 1975. Pursuant to the Act, this sum was paid directly to petitioner from the Alaska Native Fund.[5]

Petitioner did not include the money paid to him from the Alaska Native Fund as compensation for legal services in the gross income reported on his Federal income tax return for 1975. In an

---

[3](continued)
Tsimshian Indians not enrolled in the Metlaktla [sic] Indian Community) Eskimo, or Aleut blood, or combination thereof. * * *

* * *

Sec. 1604. Enrollment

(Footnote continued)

attachment to that return, petitioner explained that under "the terms of 43 U.S. Code 1620, such payment is exempt because he is an enrolled native within the meaning of" the ANCSA. In the notice of deficiency, respondent determined that the money received by petitioner as compensation for legal services was includable in his gross income for 1975.

---

[2](continued)

(a) Eligible Natives; finality of decision

The Secretary [of the Interior] shall prepare within two years from December 18, 1971, a roll of all Natives who were born on or before, and who are living on, December 18. 1971. * * *

(b) Residence; order of priority in enrollment of Natives not permanent residents; regional family or hardship enrollment

The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration,

(Footnote continued)

---

[2](continued)
and he shall be enrolled according to such residence. Except as provided in subsection (c) of this section, a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to section 1606(a) of this title shall be enrolled by the Secretary in one of the twelve regions * * *.

(c) Election of enrollment in thirteenth region, if established, of Native nonresidents; dependent household members as bound

A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to section 1606(c) of this title. * * *.

[3] Petitioner had previously represented other Alaska Natives.

[4] Subsequent to the enactment of the ANCSA, the Chief Commissioner of the United States Court of Claims was redesignated as "chief of the trial division." General Order No. 2 of 1973 of the United States Court of Claims, issued Aug. 1, 1973. For purposes of
(Footnote continued)

---

[4](continued)
this opinion, he will be referred to as the Chief Commissioner.

[5] Secs. 1605 and 1619 provide in pertinent part as follows:

Sec. 1605. Alaska Native Fund

(a) Establishment in Treasury; deposits into Fund of general fund, interest, and revenue sharing moneys

There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) $462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

(A) $12,500,000 during the fiscal year in which this chapter becomes effective;

(B) $50,000,000 during the second fiscal year;

(C) $70,000,000 during each of the third, fourth and fifth fiscal years;

(D) $40,000,000

(Footnote continued)

[5](continued)

during the period beginning July 1, 1976, and ending September 30, 1976; and

(E) $30,000,000 during each of the next five fiscal years, for transfer to the Alaska Native Fund in the fourth quarter of each fiscal year.

(2) Four percent interest per annum, which is authorized to be appropriated, on any amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.

(3) $500,000,000 pursuant to the revenue sharing provisions of section 1608 of this title.

* * *

(c) Distribution of Fund moneys among organized Regional Corporations; basis as relative number of Native enrollees in each region; reserve for payment of attorney and other fees; retention of share in Fund until organization of corporation

(Footnote continued)

---

[5](continued)

After completion of the roll prepared pursuant to section 1604 of this title, all money in the Fund, except money reserved as provided in section 1619 of this title for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 1606 of this title on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

Sec. 1619. Attorney and consultant fees

(a) Holding moneys in Fund for authorized payments

The Secretary of the Treasury shall hold in the Alaska Native Fund, from the appropriation made pursuant to section 1605 of this title for the second fiscal year, moneys sufficient to make the payments authorized by this section.

(b) Claims; submission

A claim for attorney and consultant fees and out-of-pocket expenses may be submitted to the Chief Commissioner of the United States Court of Claims for services

(Footnote continued)

---

[5](continued)
rendered before December 18, 1971, to any Native Tribe, band, group, village, or association in connection with:

(1) the preparation of this chapter and previously proposed Federal legislation to settle Native claims based on aboriginal title, and

(2) the actual prosecution pursuant to an authorized contract or a cause of action based upon a claim pending before any Federal or State Court of the Indians Claims Commission that is dismissed pursuant to this chapter.

* * *

(d) Rules for receipt, determination, and settlement of claims

The Chief Commissioner or his delegate is authorized to receive, determine, and settle such claims in accordance with the following rules:

(1) No claim shall be allowed if the claimant has otherwise been reimbursed.

(2) The amount allowed for services shall be based on the nature of the service rendered, the time and labor required, the need for providing the service, whether

(Footnote continued)

---

[5](continued)
the service was intended to be a voluntary public service or compensable, the existence of a bona fide attorney-client relationship with an identified client, and the relationship of the service rendered to the enactment of proposed legislation. * * *

* * *

(4) The amounts allowed for services rendered shall not exceed in the aggregate $2,000,000 of which nor more than $100,000 shall be available for the payment of consultants' fees. If the approved claims exceed the aggregate amounts allowable, the Chief Commissioner shall authorize payment of the claims on a pro rata basis.

* * *

(e) Report to Congress; payment of claims; interest restriction

The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Secretary of the Treasury shall pay to such person from the Alaska Native Fund the amounts certified. No award under this section shall bear interest.

OPINION

Sections 1 and 61 of the Internal Revenue Code of 1954 broadly provide that the income of every individual, from whatever source derived, is subject to the Federal income tax. Accordingly, the income of Indians, as well as other individuals, is taxable "unless an exemption from taxation can be found in the language of a Treaty or Act of Congress." Commissioner v. Walter, 326 F.2d 261, 263 (9th Cir. 1964), affd. in part and revd. in part 37 T.C. 962 (1962), and cases there cited; Jourdain v. Commissioner, 71 T.C. 980, 987 (1979), affd. per curiam 617 F.2d 507 (8th Cir. 1980).

Relying upon section 1620(a), petitioner contends that the money paid

to him from the Alaska Native Fund as compensation for legal services is exempt from taxation. That section provides as follows:

> (a) Fund revenues exemption; investment income taxable
>
> Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

Petitioner argues that this language creates a blanket exemption immunizing the entire Alaska Native Fund from Federal, State, or local taxation "to the extent that it is distributed to qualified natives--in any manner."

Respondent's position is that the purpose of the ANCSA was to settle aboriginal land claims. He contends that the exemption from taxation contained in

section 1620(a) was intended to ensure that amounts paid to Natives for the settlement of such claims would be treated as a return of capital. Respondent argues that "there is no theory under which the compensation paid to petitioner Frederick Paul for legal services can be characterized as a return of capital" and that, therefore, such compensation is taxable.

We hold for respondent.

Read literally and wholly apart from certain other provisions of the ANCSA, section 1620(a) may well appear to exempt from taxation the moneys paid to petitioner from the Alaska Native Fund for legal services because he is a "Native" within the meaning of the Act. However--

> It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within

the intention of its makers. Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892). See Doyon, Ltd. v. Bristol Bay Native Corp., 569 F.2d 491, 494-195 (9th Cir. 1978) (construing sec. 1605(c) of the ANCSA), cert. denied 439 U.S. 954 (1978); Train v. Colorado Pub. Int. Research Group, 426 U.S. 1, 9-10 (1976); Chemehuevi Tribe of Indians v. FPC, 420 U.S. 395, 405 (1975). After considering section 1620(a) in conjunction with the other provisions of the ANCSA and in light of the purposes and legislative history of the Act, we are convinced that it cannot be read and was not intended to exempt from taxation amounts paid out of the Alaska Native Fund as compensation for legal service.

When Alaska was purchased from Russia is 1867, the Treaty of Cession did not address the property rights of Native

inhabitants.[6] It merely provided that the Natives would be subject to such laws as the United States might adopt with respect to the aboriginal tribes. Various pieces of legislation were subsequently enacted by Congress with respect to the public lands in Alaska, but these laws did not provide for the compensation of Natives for land and land rights expropriated by the United States or usurped by non-Natives. In 1935, the Congress enacted a jurisdictional statute authorizing a suit by the Tlingit and Haida Indians of southeastern Alaska, and they brought suit and obtained a judgment in the United States Court of Claims for the failure of the United States to

---

[6] See United States v. Atlantic Richfield Co., 435 F.Supp. 1009, 1014-1019 (D. Alaska 1977), for a good overview of the history of Alaska Native land claims.

respect and protect their rights. The Tee-Hit-Ton Indians, without the benefit of such a statute, sued but recovered nothing.

In December 1971, the Congress effected a legislative settlement by enacting the ANCSA which was designed to provide "a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims."[7] Under this Act, a cash payment of $962,500,000 was to be made over a period of years to the Alaska Native Fund, to be set up by the Treasury Department. Of that sum, $462,500,000 was to be paid from the Federal treasury and the remainder was to be derived from revenues from leasable minerals on public lands in Alaska, including lands which

---

[7] Sec. 1601(a)

had been approved, and which were to be selected in the future, for transfer to the State of Alaska.[8] In addition to the cash payment, 40 million acres of land were to be transferred to Native corporations to be established pursuant to the Act.[9] Future revenues from these lands are to be the property of the Native corporations.[10]

The Act requires that all money in the Alaska Native Fund, "except money reserved as provided in section 1619 * * * for the payment of attorney and other fees," be distributed quarterly among Regional Corporations organized pursuant to section 1606[11] and that such

---

[8] Secs. 1605, 1608.

[9] Secs. 1611 and 1612.

[10] See sec. 1606(i)

[11] Sec. 1606 provides in part as follows:
(Footnote continued)

distribution be made "on the basis of the relative numbers of Natives enrolled in each region." Sec. 1605(c). Under section 1606(g), a Regional Corporation is authorized to issue 100 shares of stock to each Native enrolled in the region.[12] Such stock permits the holder to receive "dividends or other distributions" from the Regional Corporation. Sec. 1606(h)(1). Subsections (j), (k), (l) and (m) of section 1606 set forth certain requirements concerning distributions by a Regional Corporation to its stockholders and to Village Corporations[13] in the region. This

---

[11](continued)

(a) Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration

(Footnote continued)

entire scheme for the general distribution of the Alaska Native fund makes it clear that all stockholder Natives were to benefit equally from it. See Doyon, Ltd. v. Bristol Bay Native Corp., supra at 495. The basically equal distribution scheme makes no provision for payments of attorney fees.

Section 1619(a) provides, instead, that the "Secretary of the Treasury shall hold in the Alaska Native Fund * * * moneys sufficient to make the payments authorized" for attorney and other fees.[14] Claims for attorney fees for services rendered in connection with the

---

[11](continued)

> For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. * * *

(Footnote continued)

settlement of Native land claims were to be submitted to the Chief Commissioner of the United States Court of Claims within one year from the enactment of the ANCSA. Sec. 1619(b) and (c). Such claims were to be allowed--

> based on the nature of the service rendered, the time and labor required, the need for providing the service, whether the service was intended to be a voluntary public service or compensable, the existence of a bona fide attorney-client relationship with an identified client, and the relationship of the service rendered to the enactment of proposed legislation.

Sec. 1619(d)(2). Those claims allowed and certified by the Chief Commissioner

---

[11](continued)

* * *

(d) Incorporation; business for profits, eligibility for benefits; provisions in articles for carrying out chapter

Five incorporators within each (Footnote continued)

were to be paid by the Secretary of the Treasury from the moneys reserved from congressional appropriations included in the Alaska Native Fund for this purpose. Sec. 1619(e); see sec. 1619(a) and (d)(4). These special provisions for the payment of attorney fees, under which petitioner received the money in question, are entirely separate from the scheme for general distribution of the Alaska Native Fund to Native Corporations and individual Natives.

Under section 1620(a), quoted above, revenues originating from the Alaska Native Fund are exempt from any form of

---

[11](continued)
region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this chapter so long as it is organized and functions in accordance with this chapter. The articles of
(Footnote continued)

taxation at the time of receipt by a Native Corporation or individual Native "through dividend distributions or in any other manner." As previously noted, a literal reading of this section out of context would appear to exempt from taxation the money paid to petitioner under section 1619 as compensation for legal services. However, when read in light of the avowed purpose of the Act (i.e., to settle Native land claims) and in context with the above-described provisions of the Act concerning distributions to Native Corporations and individual Natives, section 1620(a)

---

[11](continued)
incorporation shall include provisions necessary to carry out the terms of this chapter.

[12] Petitioner is a stockholder in the Sealaska Corporation, one of the Regional Corporations organized under this Act.

refers only to amounts generally distributed to Native Corporations and individual Natives for the settlement of land claims and not to amounts specially set aside and paid as compensation for legal services.

The tax exemption of section 1620(a) applies to revenues originating from the Alaska Native Fund received by "a Regional Corporation, Village Corporation, or individual Native." Pursuant to the scheme for distribution of the Alaska Native Fund, the entire amount of which constitutes the monetary compensation granted in settlement of

---

[13] Sec. 1607(a) requires the organization of Village Corporations by the Native residents of each village.

Hereinafter, the Regional and Village Corporations will sometimes be referred to collectively as Native Corporations.

[14] Attorney fees thus were to be paid
(Footnote continued)

Native land claims, all moneys except those set aside for payment of attorney and other fees must be distributed initially to the Regional Corporations. Sec. 1605(c). Accordingly, the general population of Natives is eligible to actually receive amounts originating from the Alaska Native Fund, as individuals, only by way of "dividends or other distributions" from Regional Corporations or, possibly, Village Corporations. See secs. 1606 and 1607. Of course, amounts set aside in the treasury for the payment of attorney and other fees can be considered as having been constructively received by the Alaska Natives generally

---

[14](continued)
from funds appropriated by Congress and reserved in the fund rather than from revenues derived from the exploitation of leasable minerals on public lands. See fn. 5, supra, for the text of sec. 1619 insofar as it is pertinent here.

and then used to pay those fees. No doubt Congress intended that all amounts actually or constructively received by the Native people for the settlement of land claims would be exempt from taxation; however, we find nothing in the Act to indicate a similar intent with respect to amounts received by an attorney for legal services simply because he happened to be a Native.

The legislative history of the Act confirms that Congress did not intend to exempt amounts received as compensation for legal services. Compare Train v. Colorado Pub. Int. Research Group, supra at 10-11; Chemhuevi Tribe of Indians v. FPC, supra at 405; Doyon, Ltd. v. Bristol Bay Native Corp., supra at 495. With respect to individual Natives, there was no provision comparable to section 1620(a) in the House version of the bill

leading to the ANCSA.[15] The House bill was amended in the Senate to provide that compensation paid to the Natives for the settlement of land claims would be exempt from taxation "either (1) at the time of receipt, or (2) upon distribution to any Native corporation or individual Native, whether directly by a per capita payment or indirectly through such corporation or corporations." S. Rept. No. 92-405, to accompany S. 35, at 59 (1971) (see sec. 27(a) and (b) of the Senate bill).[16] This provision was explained in S. Rept. No. 92-405, supra at 175-176, as follows:

> Section 27 [of the Senate amendment] provides for the

---

[15] Sec. 6(m) of the House bill provided as follows (117 Cong. Rec. 37064 (1971)):

> Moneys received by the [regional] corporation from the Alaska Native Fund shall not constitute taxable income to the corporation for any purpose. This exemption shall not apply to income from the
> (Footnote continued)

> taxation or exemption from taxation of funds * * * granted to the Natives under this Act according to the general principle that the resources hereby made available represent compensation for the extinguishment of Native land claims by the operation of this Act, and that in accordance with general principles of taxation such compensation does not constitute taxable income.

This rationale does not apply to compensation for legal services. There is thus no question that, under the Senate amendment, amounts paid as compensation for legal services from the moneys reserved for that purpose would have been taxable even though received by a Native attorney.[17]

---

[15](continued)
investment of such moneys.

This provision was not discussed in the committee report on the House version of the bill, H. Rept. No. 92-523, to accompany H.R. 10367 (Pub. L. No. 92-203) (1971).

[16] The Senate amendment substituted the
(Footnote continued)

The conference report on the ANCSA states that section 1620 "parallels section 27 of the Senate amendment and with some deletions and modifications is substantially the same." Conf. Rept. No. 92-581, to accompany H.R. 10367 (Pub. L. No. 92-203), at 46 (1971). Further, that report states that section 1620 "provides for the tax treatment to be accorded * * * revenues granted by this Act for the settlement of the Alaska Native claims [emphasis added]." Conf. Rept. No. 92-581, supra at 46. Given this legislative history, we think it clear that section 1620(a) cannot be read

---

[16](continued)
language of S. 35, 92d Cong., 1st Sess. (1971) for that of the House bill (117 Cong. Rec. 38470 (1971)).

[17] Both the Senate amendment and the House version of the bill contained provisions for the payment of attorney fees substantially identical to sec. 1619 as enacted. These special provisions for
(Footnote continued)

so as to exempt from taxation the moneys paid to petitioner for legal services.

Contrary to the suggestion of petitioner, such a reading of section 1620(a) does not render nugatory any portion of the language to the effect that revenues from the Alaska Native Fund are exempt from taxation when received by an individuaal Native "through dividend distributions or in any other manner." We agree with petitioner that, under section 1620(a), money received from the Alaska Native Fund is exempt from taxation "to the extent that it is distributed to qualified natives--in any manner." However, the money in the form

---

[17](continued)
the payment of attorney fees were included in order to limit such fees and "maximize the amount of the settlement to be received by the Natives." S. Rept. No. 92-405, to accompany S. 35, at 175 (1971). See H. Rept. No. 92-523, supra at 9.

of the legal fees in question was not received by petitioner as part of a distribution to qualified Natives. Petitioner was paid for legal services rendered to the Natives and, as we read section 1620(a) in light of its purpose, context, and legislative history,[18] such payments do not constitute distributions made by way of dividends or in any other manner.[19]

In short, the payments for legal services received by petitioner fall outside the scope of the tax exemption provided in section 1620(a).[20]

In reaching this conclusion, we have

---

[18] As stated by the Supreme Court in Helvering v. Stockholms &c. [sic] Bank, 293 U.S. 84, 93-94 (1934), the intention of the lawmaker controls in the construction of statutes, and--

> that intention is to be ascertained, not by taking the word or clause in question from its setting and viewing it apart,

(Footnote continued)

considered the general rule that doubtful expressions in statutes or treaties dealing with Indians are to be resolved in their favor. See, e.g., Decoteau v. District County Court, 420 U.S. 425, 444 (1975); Squire v. Capoeman, 351 U.S. 1, 6-7 (1956). However, because we are here concerned with the application of section 1620(a) to an amount paid under a special provision for attorney fees rather than under a provision pertaining to the Alaska Natives generally, we think that this rule operates with less force than it normally would. Further the rule is at base "a canon of construction [and] is

---

[18](continued)
but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will. * * *

not a license to disregard clear expressions of * * * congressional intent." DeCouteau v. District County Court, supra at 447.

To reflect the foregoing,

Decision will be entered for the respondent.

---

[19] Compare Jourdain v. Commissioner, 71 T.C. 980, 989 (1979), affd. per curiam 617 F.2d 507 (8th Cir. 1980).

[20] As previously noted, the amounts reserved in Alaska Native Fund for the payment of attorney fees can be considered as having been constructively received by the Natives generally and then used to pay those fees. If petitioner's argument that such payments are exempt from tax when received by a Native attorney is correct, it would seem to follow that any amount received by a Native as payment for goods or services would be exempt from tax so long as the moneys could be traced to the Alaska Native Fund. This would clearly be an untenable result.

UNITED STATES TAX COURT

FREDERICK PAUL and AILEEN M. PAUL,	)	
Petitioners	)	Docket No. 15502-79
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

D E C I S I O N

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed October 5, 1981, it is

ORDERED AND DECIDED: There is a deficiency in the amount of $118,132 in petitioners' Federal income tax for 1975.

C. Moxley Featherston
Judge

B-35

Entered: October 6, 1981

APPENDIX C

UNITED STATES TAX COURT

FREDERICK PAUL and AILEEN M. PAUL,	)	
Petitioners,	)	Docket No. 15502-79
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

STIPULATION OF FACTS

The parties hereby stipulate and agree that for the purpose of this case the following facts and exhibits attached hereto and made a part hereof may be taken as true, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation.

1. At the time the petition herein was filed, petitioners Frederick Paul and Aileen M. Paul resided in Seattle, Washington.

2. Petitioners filed a joint U. S. Individual Income Tax Return (Form 1040) for the calendar year 1976 with the Ogden Service Center, Ogden, Utah, on June 21, 1976. A copy of the return is attached hereto as joint exhibit 1-A.

3. Frederick Paul, hereinafter called petitioner, is one-quarter Tlingit Indian and is a member of the Tee-Hit-Ton Tribe of the Tlingit Nation. Petitioner is a "native" as defined by §1(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. §1602(b), and is duly enrolled pursuant to §3 of the Act, 43 U.S.C. §1604.

4. Petitioner is an attorney at law admitted to practice in the States of Alaska and Washington. Petitioner specializes in the practice of Indian law and holds himself out as an expert in that area. He spent in excess of five

years of his professional time engaged in intensive work on behalf of the people of the North Slope and of Alaska Indians and Eskimos generally.

5. As a result of legal services performed on behalf of people of the North Slope, Alaska Indians and Eskimos, petitioner was granted compensation by the Court of Claims in the amount of $275,095. This amount was paid directly to petitioner from the Alaskan Native Fund pursuant to §20 of the Alaskan Native Claims Settlement Act, 43 U.S.C. §1619.

6. Petitioner did not include the $275,095 payment received from the Alaskan Native Fund in gross income reported for the taxable year 1975 or any other year.

APPENDIX D

Table of Contents to Appendix D

I.	Statutes		Page
	A.	Excerpts from 43 U.S.C. 1601 et seq.	D-2
	B.	Excerpt from U.S.C. §1605	D-2
	C.	Excerpt from U.S.C. §1606	D-6
	D.	Excerpt from U.S.C. §1619	D-19
	E.	Excerpt from 43 U.S.C. §1620(a)	D-27
II.	Congressional Material		
	A.	S. 35, 92nd Cong., 1st Sess. §27(a), 117 Cong. Rec. 38,313 (1071)	D-27
	B.	H.R. 10,367, 92nd Cong., 1st Sess. §6(m), 117 Cong. Rec. 37,064 (1971).	D-28
	C.	House Conf. Rep. No. 647, 92nd Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News 2247, 2259.	D-28

§ 1601. Congressional findings and declaration of policy

Congress finds and declares that--

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

B. 43 U.S.C. §1605

§1605. Alaska Native Fund -- Establishment in Treasury; deposits into Fund of general

fund, interest, and revenue sharing moneys

(a) There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) $462,500,000 from the general fund of the Treasury, which are authorized to be appropriate according to the following schedule:

(A) $12,500,000 during the first fiscal year in which this chapter becomes effective;

(B) $50,000,000 during the second fiscal year;

(C) $70,000,000 during each of the third, fourth, and fifth fiscal years;

(D) $40,000,000 during the period beginning July 1, 1976, and ending September 30, 1976; and

(E) $30,000,000 during each of the next five fiscal years, for transfer

to the Alaska Native Fund in the fourth quarter of each fiscal year.

(2) Four percent interest per annum, which is authorized to be appropriated, on an amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.

(3) $500,000,000 pursuant to the revenue sharing provisions of section 1608 of this title.

Prohibition of expenditures for propaganda or political campaigns; misdemeanor; penalty

(b) None of the funds paid or distributed pursuant to this section to any of the Regional and Village Corporations established pursuant to this chapter shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing and distributing of statements) any political campaign on behalf of any candidate for public

office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than twelve months, or both.

Distribution of Fund moneys among organized Regional Corporations: basis as relative number of Native enrollees in each region; reserve for payment of attorney and other fees; retention of share in Fund until organization of corporation

(c) After completion of the roll prepared pursuant to section 1604 of this title, all money in the Fund, except money reserved as provided in section 1619 of this title for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organization pursuant to section 1606 of this title on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

Pub.L. 92-203, § 6, Dec. 18, 1971, 85 Stat. 690, amended Pub.L. 94-273, §38, Apr. 21, 1976, 90 Stat. 380.

C. 43 U.S.C. §1606

§1606. Regional Corporations--Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration

(a) For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native association:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, St. Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Halda Central Council (south-

eastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Cooper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

Region mergers; limitation

(b) The Secretary may, on request made within one year of December 18, 1971, by representation and responsible leaders of the Native association listed in subsection (1) of this section, merge two or more of the twelve regions; Provided, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

Establishment of thirteenth region for nonresident Natives; majority vote; Regional Corporation for thirteenth region

(c) If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of Alaska elect, pursuant to section 1604(c) of this title, to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, the Secretary shall establish such a region for the benefit of the natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this chapter.

Incorporation; business for profit; eligibility for benefits; provisions in articles for carrying out chapter

(d) Five Incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this chapter so long as it is organized and functions in accordance with this chapter. The articles of incorporation shall include provisions necessary to carry out the terms of this chapter.

Original articles and bylaws; approved by Secretary prior to filing, submission for approval; amendments; to articles; approval by Secretary, withholding approval in event of creation of inequities among native individuals or groups

(e) The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after December 18, 1971. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of native individuals would be created.

Board of directors; management; stockholders; provisions in articles or bylaws for number, term, and method of election

(f) The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be

stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

Stock; issuance; provision in articles for division into classes and issuance of one hundred shares of Native regional enrollees

(g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this chapter, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 1604 of this title.

Stockholders' rights; alienation restriction; period; exception, certain stock transfers pursuant to court decree; stock transfer; voting rights, escheat; stock, reissuance without restrictions after prescribed period

(h) (1) Except as otherwise provided in paragraph (2)

of this subsection, stock issued pursuant to subsection (g) of this section shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after December 18, 1971, the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution assigned in present or future, or otherwise alienated: Provided, That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support.

(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of Intestacy, except that (A) during the twenty-year period after December 18, 1971, such stock shall carry voting rights only if the holder thereof through inheritance also is a Native, and (B), in the event the

deceased stock holder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.

(3) On January 1 of the twenty-first year after the year in which this chapter is enacted, all stock previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued without restrictions required by this chapter to each stockholder share for share.

Certain natural resource revenues; distribution among Corporations; computation of amount; subsection inapplicable to thirteenth Regional Corporation

(i) Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this chapter shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 1604 of this title. The provisions of this subsection shall not apply to the thirteenth Regional

Corporation if organized pursuant to subsection (c) hereof.

Corporation funds and other net income, distribution among; stockholders of Regional Corporations; Village Corporations and nonresident stockholders; and stockholders of thirteenth Regional Corporation

(j) During the five years following December 18, 1971, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 1605 of this title (Alaska Native Fund), and under subsection (i) of this section (revenues from the timber resources and subsurface estate patented to it pursuant to this chapter), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection 1 to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate

funds received under section 1605 of this title shall be distributed to the stockholders.

Distributions among Village Corporations; computation of amount

(k) Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of the residents in all villages.

Distributions to Village Corporations; village plan; withholding funds until submission of plan for use of money; joint ventures and joint financing of projects; disagreements, arbitration of issues as provided in articles of Regional Corporation

(l) Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may

require a village plan to provide for joint ventures with other villages, and for joint financing projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

Distributions among Village Corporations in a region; computation of dividends for nonresidents of village; financing regional projects with equitably withheld dividends and Village Corporation funds

(m) When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of

stock registered in the names of village residents: Provided, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

Projects for Village Corporations

(n) The Regional Corporation may undertake on behalf of one or more of the Village Corporations in the region any project authorized and financed by them.

Annual audit; place; availability of papers, things, or property to auditors to facilitate audits; verification of transactions; reports to stockholders, Secretary, and Congressional committees

(o) The accounts of the Regional Corporation shall be audited annually in accordance with general accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of the State or the United States. The audits

shall be conducted at the place or places where the accounts of the Regional Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Regional Corporation and necessary to facilitate the audits shall be available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agent, and custodians shall be afforded to such person or persons. Each audit report or a fair and reasonably detailed summary thereof shall be transmitted to each stockholder, to the Secretary of the Interior and the Committees on Interior and Insular Affairs of the Senate and the House of Representatives.

Federal-State conflict of laws

(p) In the event of any conflict between the provisions of this section and the laws of the State of Alaska, the provisions of this section shall prevail.

Business management groups; investment services contracts

(q) Two or more Regional Corporations may contract with the same business management group for investment services and advice regarding the investment of the corporate funds.
Pub. L. 92-203, §7, Dec. 18, 1971, 85 Stat. 691

D. 43 U.S.C. §1619

§ 1619. Attorney and consultant fees--Holding moneys in Fund for authorized payments

(a) The Secretary of Treasury shall hold in the Alaska Native Fund, from the appropriation made pursuant to section 1605 of this title for the second fiscal year, moneys sufficient to make the payments authorized by this section.

Claims: submission

(b) A claim for attorney and consultant fees and out-of-pocket expenses may be submitted to the Chief Commissioner of the United States Court of Claims for services rendered before December 18, 1971, to any native tribe, band, group, village, or association in connection with:

(1) the preparation of this chapter and previously proposed Federal

legislation to settle Native claims based on aboriginal title, and

(2) the actual prosecution pursuant to an authorized contract or a cause of action based upon a claim pending before any Federal or State Court or the Indians Claims Commissions that is dismissed pursuant to this chapter.

Same; filing date; form; information

(c) A claim under this section must be filed with the clerk of the Court of Claims within one year from December 18, 1971, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. Claims not so filed shall be forever barred.

Same; rules for receipt, determination, and settlement

(d) The Chief Commissioner or his delegate is authorized to receive, determine, and settle such claims in accordance with the following rules:

(1) No claim shall be allowed if the claimant has otherwise been reimbursed.

(2) The amount allowed for services shall be based on the nature of the service rendered, the time and labor required, the need for providing the service, whether the service was intended to be a voluntary public service or compensable, the existence of a bona fide attorney-client relationship with an identified client, and the relationship of the service rendered to the enactment of proposed legislation. The amount allowed shall not be controlled by any hourly charge customarily charged by the claimant.

(3) The amount allowed for out-of-pocket expenses shall not include office overhead, and shall be limited to expenses that were necessary, reasonable, unreimbursed and actually incurred.

(4) The amounts allowed for services rendered shall not exceed in the aggregate $2,000,000, of which not more than $100,000 shall be available for the payment of consultants' fees. If the approved claims exceed the aggregate amounts allowable, the Chief Commissioner shall authorize payments on the claims on a pro rata basis.

(5) Upon the filing of a claim, the clerk of the Court of Claims shall forward a copy

of such claims to the individuals or entities on whose behalf services were rendered or fees and expenses were allegedly incurred, as shown by the pleadings, to the Attorney General of the United States, to the Attorney General of the State of Alaska, to the Secretary of the Interior, and to any other person who appears to have an interest in the claim, and shall give such persons ninety days within which to file an answer contesting the claim.

(6) The Chief Commissioner may designate a trial commissioner for any claim made under this section and a panel of three commissioners of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding commissioner of the panel.

(7) Proceedings in all claims shall be pursuant to rules and orders prescribed for the purpose by the Chief Commissioner who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Claims insofar as feasible. Claimants may appear before a trial commissioner in person or by attorney, and may produce evidence and examine witnesses. In the discretion of the Chief Commissioner or

his designate, hearings may be held in the localities where the claimants reside if convenience so demands.

(8) Each trial commissioner and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, and shall have the power of subpena, the power to order audit of books and records, and the power to administer oaths and affirmations. Any sanction authorized by the rules of practice of the Court of Claims, except contempt, may be imposed on any claimant, witness, or attorney by the trial commissioner, review panel or Chief Commissioner. None of the rules, regulations, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(9) The findings and conclusions of the trial commissioner shall be submitted by him, together with the record in the case, to the review panel of commissioners for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the decision of the trial commissioner to the claimant and any party contesting the claim for consideration,

exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the trial commissioner.

(10) The Court of Claims is hereby authorized and directed, under such conditions as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing and dispatch of claims made pursuant to this section and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the items herein listed) the salaries and traveling expenses of its auditors and the commissioners serving as trial commissioners and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries, reporters, auditors, and law clerks).

Report to Congress; payment of claims; interest restriction

(e) The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Secretary of the Treasury

shall pay to such person from the Alaska Native fund the amounts certified. No award under this section shall bear interest.

Contract restriction; penalty

(f) (1) No remuneration on account of any services or expenses for which a claim is made or could be made pursuant to this section shall be received by any person for such services and expenses in addition to the amount paid in accordance with this section, and any contract or agreement to the contrary shall be void.

(2) Any person who receives, and any corporation or association official who pays, on account of such services and expenses, any remuneration in addition to the amount allowed in accordance with this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than twelve months, or both.

Claims for costs in performance of certain services: submission, form, information, reasonableness, pro rata reduction; report to Congress; payment of claims, interest restriction

(g) A claim for actual costs incurred in filing protests, preserving land claims, advancing land claims settlement legislation, and presenting testimony to the Congress on proposed Native land claims may be submitted to the Chief Commissioner of the Court of Claims by any bona fide association of Natives. The claim must be submitted within six months from December 18, 1971, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. The Chief Commissioner shall allow such amounts as he determines are reasonable, but he shall allow no amount for attorney and consultant fees and expenses which shall be compensable solely under subsection (b) through (e) of this section. If approved claims under this subsection aggregate more than $600,000, each claim shall be reduced on a pro rata basis. The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The secretary of the Treasury shall pay to such claimant from the Alaska Native Fund the amount certified. No award under this subsection shall bear interest. Pub.L. 92-203 § 20, Dec. 18, 1971, 85 Stat. 710

E. 43 U.S.C. §1620(a)

§ 1620. Taxation--fund revenue revenues exemption; investment income taxable

(a) Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

II. Congressional Material

A. S. 35, 92nd Cong., 1st Sess. §27(a), 117 Cong. Rec. 38,313 (1971).

Taxation

Sec. 27. (a) The compensation paid to Natives pursuant to section 5(a) of this Act, and any interest earned with respect thereto while such funds are deposited in the Fund or are invested by the Secretary pursuant to section 5, shall not be subject to any form of Federal or State taxation either (1) at the time of receipt, or (2) upon distribution to any Native corporation or individual Native, whether directly by a per

capita payment or indirectly through such corporation or corporations. For purposes of this subsection, the first dividend payment or other cash distributions made by any Native corporation shall be deemed to be distribution out of its share of funds derived from section 5(a), including interest, until such share has been fully distributed.

B. H.R. 10,367, 92nd Cong., 1st Sess. §6(m), 117 Cong. Rec. 37,064 (1971).

(m) Moneys received by the corporation from the Alaska Native Fund shall not constitute taxable income to the corporation for any purpose. This exemption shall not apply to income from the investment of such moneys.

C. House Conf. Rep. No. 647, 92nd Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News 2247, 2259.

ALASKA NATIVE CLAIMS ACT
P.L. 92-203

CONFERENCE REPORT NO. 92-746

JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on

the amendment of the Senate to the Bill (H.R. 10367) "to provide for the settlement of certain land claims of Alaska Natives, and for other purposes," submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

. . . .

Section 20. Attorney and consultant fees

Section 20 of the conference report provides for the payment of attorney and consultant fees. The parallel language of the Senate amendment is section 26. The Senate language is substantially the same, except that the total amount of fees granted has been reduced to $2 million. In addition, the conference report authorizes the $600,000 granted by subsection 5(g)(1) of the Senate amendment in this section.

Section 21. Taxation

Section 21 of the conference report provides for the tax treatment to be accorded lands and revenues granted by this Act for the settlement of the Alaska Native claims. It parallels section 27 of the Senate amendment and with some

deletions and modifications is substantially the same.

Office - Supreme Court, U.S.
FILED
DEC 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-659

In the Supreme Court of the United States

OCTOBER TERM, 1983

FREDERICK PAUL AND AILEEN M. PAUL, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General

GLENN L. ARCHER, JR.
Assistant Attorney General

RICHARD FARBER
DOUGLAS G. COULTER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Section 21 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1620, provides that revenues originating from the Alaska Native Fund shall be exempt from federal income tax "at the time of receipt by * * * [an] individual Native through dividend distributions or in any other manner." The question presented is whether this Section operates to exempt from tax amounts received by a Native attorney, not as a distribution in settlement of Native land claims, but as compensation for legal services rendered.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Conclusion 6

TABLE OF AUTHORITIES

Cases:

Commissioner v. *Walker*, 236 F.2d 261 4

Church of the Holy Trinity v. *United States*, 143 U.S. 457 5

Squire v. *Capoeman*, 351 U.S. 1 4

Train v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 5

Statutes:

Alaska Native Claims Settlement Act, 43 U.S.C. (& Supp. V) 1601 *et seq.* 2

43 U.S.C. 1605(c) 2, 4
43 U.S.C. 1619 ..... 2, 4
43 U.S.C. 1620(a) 2, 3, 4, 5

Internal Revenue Code of 1954, 26 U.S.C. 61 4

Miscellaneous:

H.R. Conf. Rep. 92-746, 92d Cong., 1st Sess. (1971) 5

S. 35, 92d Cong., 1st Sess. (1971) 4

S. Rep. 92-405, 92d Cong., 1st Sess. (1971) 4

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-659

FREDERICK PAUL AND AILEEN M. PAUL, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A8) is not officially reported. The opinion of the Tax Court (Pet. App. B1-B33) is reported at 77 T.C. 755.

JURISDICTION

The judgment of the court of appeals was entered on July 21, 1983 (Pet. App. A9). The petition for a writ of certiorari was filed on October 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner Frederick Paul[1] is an attorney who specializes in Indian law. He is one quarter Tlingit Indian, making him a "Native" within the meaning of the Alaska Native Claims

[1]Petitioner Aileen M. Paul is married to Frederick and is a party to this case solely by virtue of having filed a joint return with her husband for the tax year at issue.

Settlement Act (ANCSA), 43 U.S.C. (& Supp. V) 1601 *et seq.* (Pet. App. B3). In 1966 petitioner agreed to represent a group of Alaska Natives seeking settlement of land claims against the United States. This work extended over five years and involved matters settled by the passage of ANCSA. Petitioner was awarded compensation in the amount of $275,095 for these services by the Court of Claims pursuant to 43 U.S.C. 1619. Pet. App. B3-B4. This compensation was paid in 1975 directly from the Alaska Native Fund out of "money reserved [therein] for the payment of attorney and other fees." 43 U.S.C. 1605(c).

Petitioner did not include this compensation in his 1975 gross income for federal tax purposes (Pet. App. B4). Rather, he attached to his return a statement contending that the income was exempt from tax under 43 U.S.C. 1620(a), which provides as follows:

> Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

The Commissioner determined that Section 1620(a) did not apply to compensation for personal services and that the $275,095 was includable in petitioner's 1975 gross income. Petitioner sought redetermination of the resulting deficiency in the Tax Court, which upheld the Commissioner's proposed assessment. The Tax Court acknowledged that Section 1620(a), "[r]ead literally and wholly apart from certain other provisions of the ANCSA," appeared to exempt from taxation all monies paid to a Native from the Alaska Native Fund (Pet. App. B14). The court concluded, however, that a literal reading of the Section was unsupportable in light of the purposes of the statute, its legislative

history, and the operation of other ANCSA provisions (*id.* at B15). Congress's rationale for the tax exemption provided in Section 1620(a), the court noted, was that payments from the Alaska Native Fund "represent compensation for the extinguishment of Native land claims" and that such amounts would not constitute taxable income under general tax principles — a rationale that "does not apply to compensation for legal services" (Pet. App. B28). The court pointed out that petitioner's argument was likewise at odds with the statute's overall structure, noting that ANCSA's "special provisions for the payment of attorney fees * * * are entirely separate from the scheme for general distribution of the Alaska Native Fund" (*id.* at B22). The Tax Court accordingly concluded that, while "Congress intended that all amounts actually or constructively received by Native people for the settlement of land claims would be exempt from taxation," there was "nothing in the Act to indicate a similar intent with respect to amounts received by an attorney for legal services simply because he happened to be a Native" (*id.* at B26).

The Ninth Circuit unanimously affirmed, substantially for the reasons set forth by the Tax Court (Pet. App. A1-A8). The taxability of petitioner's income, it held, was supported both by the fact that "[p]ayments for legal services under section 1619 may be made to non-Indians as well as Alaska Natives" and by the fact that petitioner "did not receive the [income] as part of a distribution to qualified Natives" (*id.* at A7). Petitioner's compensation for legal services thus fell "outside the scope of the tax exemption in section 1620(a)" (*ibid.*).

ARGUMENT

The decisions below are correct. Petitioners do not allege (nor is there) a conflict among the circuits on the narrow question of statutory interpretation that is presented here. There is no basis for review by this Court.

Section 61 of the Internal Revenue Code of 1954 subjects income "from whatever source derived" to the federal income tax. The income of Indians, like that of other individuals, is thus taxable "unless an exemption from taxation can be found in the language of a Treaty or Act of Congress." *Commissioner* v. *Walker*, 326 F.2d 261, 263 (9th Cir. 1964). See *Squire* v. *Capoeman*, 351 U.S. 1, 6 (1956).

Petitioner's contention that the requisite exemption is provided by 43 U.S.C. 1620(a) was properly rejected by the courts below. The legislative history clearly shows that this exemption was designed to cover amounts paid from the Alaska Native Fund under Section 1605(c) in a general distribution to Natives (either directly or indirectly through Native corporations) in settlement of their land claims. There is no suggestion whatever in the statute or in its legislative history that the exemption was meant to cover amounts specially set aside and paid under Section 1619 (either to a Native or to anyone else) as compensation for legal services rendered.

The tax exemption for amounts received by individual Natives from the Alaska Native Fund was added in the Senate by substituting the language of S. 35, 92d Cong., 1st Sess. (1971), for that of the House Bill. The Senate Report accompanying S. 35 explained (S. Rep. 92-405, 92d Cong., 1st Sess. 175-176 (1971)) that a tax exemption for these amounts was appropriate because, as compensation for settlement of Native land claims, the payments in essence represented a return of capital rather than income:

> Section 27 [of the Senate amendment] provides for the taxation or exemption from taxation of funds * * * granted to the Natives under this Act according to the general principle that the resources hereby made available represent compensation for the extinguishment of Native land claims by the operation of this Act,

> and that in accordance with general principles of taxation such compensation does not constitute taxable income.

As the Tax Court said (Pet. App. B28), this return-of-capital rationale makes no sense as applied to amounts received as compensation for personal services.

Petitioner attempts to avoid the clear implication of this language by pointing out (Pet. 35-45) that the Conference Report did not adopt the Senate amendment verbatim but made "some deletions and modifications" in it. H.R. Conf. Rep. 92-746, 92d Cong., 1st Sess. 46 (1971). These "deletions and modifications," however, have nothing to do with the question presented here. The Conference Report begins its discussion of the tax exemption by stating that Section 1620(a) as enacted "provides for the tax treatment to be accorded lands and revenues granted by this Act *for the settlement of the Alaska Native Claims*" (*ibid.* (emphasis added)). The final version of Section 1620(a), therefore, like the Senate version, clearly contemplates that "[r]evenues originating from the Alaska Native Fund" means "amounts received in consideration of Native land claims," and that a tax exemption will be available only for such amounts.

In these circumstances, the courts below properly held that, although Section 1620(a) could be applied literally to support the exemption claimed by petitioner, a literal application was not within the intent of Congress. This Court early noted that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor the intention of its makers." *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459 (1892). Accord, *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976).

Petitioners' reliance (Pet. 26-32, 50-54) on various canons of statutory construction — including the principle that ambiguities in statutes governing the rights of Native Americans should be resolved in their favor — is misplaced. These canons are not substantive rules of law but are merely aids in ascertaining Congress's intent. Here, the courts below properly examined the purpose, structure, and legislative history of ANCSA and concluded that Congress did not intend to afford tax exemption to compensation an attorney receives for his services, merely because that compensation happens to have been paid out of the Alaska Native Fund.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

GLENN L. ARCHER, JR.
Assistant Attorney General

RICHARD FARBER
DOUGLAS G. COULTER
Attorneys

DECEMBER 1983

DOJ-1983-12